



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MRA-48/47946

PRELIMINARY RECITALS

Pursuant to a petition filed February 13, 2001, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Polk County Dept. of Social Services in regard to Medical Assistance (MA), a hearing was held on March 27, 2001, at Balsam Lake, Wisconsin.

The issue for determination is whether the petitioner's spouse is entitled to an increase in income under the spousal impoverishment provisions of the medical assistance program.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

Wisconsin Department of Workforce Development
Bureau of Work Support Programs
201 East Washington Avenue
P.O. Box 7935
Madison, WI 53707-7935

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309

By: Sandra Teske, ESS
Polk County Dept Of Social Services
300 Polk County Plaza, Suite 1
Balsam Lake, WI 54810

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (SSN 461-52-1554, CARES #0106748505) is a resident of a nursing home in Polk County.
2. The petitioner's husband lives in the community.
3. The petitioner receives \$544 in social security each month.
4. The petitioner's spouse receives a total of \$2,738.46 from a pension and social security each month.
5. The petitioner's spouse incurs the following expenses each month:
 - a. mortgage: \$1,523 (includes insurance and taxes)
 - b. home equity loan: \$ 260
 - c. groceries: \$ 215
 - d. clothes \$ 30
 - e. entertainment \$ 7
 - f. eating out \$ 50
 - g. recreation \$ 17
 - h. gas \$ 129
 - i. car insurance \$ 61
 - j. car maintenance \$ 115
 - k. life insurance (both) \$ 120
 - l. snow plowing \$ 19 (\$225 per year)
 - m. health insurance (ptr.) \$ 105
 - n. health insurance (spouse)\$ 114
 - o. long term care insurance \$ 37
 - p. dental insurance \$ 17
 - q. church tithe \$ 300
 - r. utility \$ 201
 - s. telephone \$ 27
6. The petitioner's health insurance policy and her husband's tithe are not necessary to meet her husband's basic needs.
7. The petitioner's husband requires \$70 a month in gas to meet his basic needs.
8. The petitioner's spouse seeks to increase his monthly income allotment in order to meet his basic needs.

DISCUSSION

Both Wisconsin and federal medical assistance laws contain provisions that grant an allowance to the spouse of institutionalized person so that the spouse does not fall into poverty. See §49.455, Wis. Stats., and 42 U.S.C. §13964-5. The allowance is the lesser of \$2,175 or \$1,875 plus an excess shelter allowance, which is any shelter cost over \$562.50. *MA Handbook*, Appendix, §23.6.0. An allowance to prevent spousal impoverishment can be increased at a fair hearing. Because any additional amount given to the community spouse is a taxpayer-financed subsidy in the form of medical assistance, the law restricts the hearing officer's ability to raise the limit. Wisconsin law provides the following test for the exception:

If either spouse establishes at a fair hearing that, due to *exceptional circumstances resulting in financial duress*, the community spouse needs income above the level provided by the minimum

monthly maintenance needs allowance determined under sub. (4)(c), the department shall determine an amount adequate to provide for the community spouse's needs and use that amount in place of the minimum monthly maintenance needs allowance in determining the community spouse's monthly income allowance under sub. (4)(b).

§49.455(8)(c), Stats. Thus a hearing officer may increase the maximum allocation ceiling only by amounts needed to allow the community spouse to avoid financial duress and to meet necessary and basic needs. This means that certain expenses that are for desirable things are rejected. For example, the Division of Hearings and Appeals has long and consistently denied donations, including those to a church. *See, e.g.*, MRA-45/#22021 MRA-32/22456 MRA-05/37611 MRA-13/45972 MRA-14/22543.

The petitioner is institutionalized and her spouse lives in the community. Her spouse receives \$2,738.46 from a pension and social security each month. He contends that this amount is inadequate to meet his needs and so requests a portion of his wife's \$544 monthly social security payment. His expenses are listed in paragraph 4 of the Findings of Fact. The church tithe cannot be allowed for the reasons given above. In addition, the health insurance for the petitioner is unnecessary because she receives medical assistance. When these two items are removed the petitioner's monthly expenses are \$2,942. The \$129 a month for gas appears to be beyond his basic need because, even if gas is \$1.70 a gallon, he can purchase over 75 gallons of gas each month, which should take him well over 1000 miles. I realize that visiting his wife and children is important, but I find that \$70 a month is adequate for this. I am also concerned with the \$50 a month for eating out, but will allow it because the petitioner is often away from home at meal time visiting his wife. I find that the \$115 for car maintenance justified because the petitioner has an old car that he is trying to keep on the road instead of buying a new one. The petitioner answered all questions I had about other expenses at the hearing. In particular I note that much of his expenses are the result of a large mortgage and home equity loan that he can reduce only by defaulting. Therefore, I find that after removing the church tithe, his wife's insurance, and a portion of his gas request that he requires \$2,883 per month for his basic needs. This is \$154.44 greater than his current income, which justifies transferring that amount from his spouse to him.

CONCLUSIONS OF LAW

The petitioner's husband has demonstrated that he requires both his and \$154.44 of his wife's income to meet his basic monthly needs.

NOW, THEREFORE, it is

ORDERED

That this matter be remanded to the county agency with instructions that within 10 days of the date of this decision it shall reduce the petitioner's share of her medical expenses by \$154.44 and allocate this amount to her spouse to meet his basic monthly needs.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of Eau
Claire, Wisconsin, this _____ day of
_____, 2001.

Michael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals
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cc: POLK COUNTY DEPT OF SOCIAL SERVICES
DHFS - Susan Wood

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